REMARKS

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner. The Office is respectfully requested to reconsider the rejections present in the outstanding Office Action in light of the following remarks.

Claims 1-13 were pending in the instant application at the time of the outstanding Office Action. Of these claims, Claims 1, 7, and 13 are independent claims; the remaining claims are dependent. Claims 3 and 9 have been cancelled without prejudice and Claims 1, 4-7, and 10-13 have been rewritten. Claims 14-22 are new claims. (There are currently 3 independent claims and 17 dependent claims). The Applicants intend no change in the scope of the claims by the changes made by these amendments. It should also be noted that these amendments are not in acquiescence of the Office's position on the allowability of the claims, but merely to expedite prosecution. Reconsideration and withdrawal of the rejections, listed below, is respectfully requested.

Claims 3, 9 and their dependent claims, 4-6 and 10-12, stand rejected under 35 USC § 112, second paragraph as indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Claims 1, 2, 7 and 8 stand rejected under 35 USC 102(b) as being anticipated by Park, U.S. Patent No. 6,418,536. Claim 13 stands rejected under 35 USC 102(e) as being anticipated by Tsirkel et al., U.S. Patent No. 6,665,805. Claims 3-6 and 9-12 stand rejected under 35 USC 103(a) as obvious over Park in view of Nguyen, U.S. Patent No. 6,77,168.

35 USC 112 Rejections

Claims 3 and 9 have been cancelled, therefore, their rejection, as well as the claims that were previously dependent upon them, under 35 USC 112, is no longer applicable.

35 USC 102(b) and (e) Rejections

Independent Claims 1, 7, and 13 have been amended to recite, *inter alia*, "[d]efining a plurality of power modes, wherein the power mode regulates the energy consumption of the device; ascertaining the proximity of an user to the device, wherein an RFID tag and RFID tag detector are used in connection with ascertaining the proximity of the user to the device; and selecting the power mode based upon the proximity of the user to the device." (See Claim 1) The use of "RFID tag and RFID tag detector" language is similar to the language previously contained in cancelled Claims 3 and 9.

As indicated in the current Office Action, Park does not disclose the use of an RFID tag and RFID tag detector in connection with ascertaining the proximity of a user to a device. In addition, Park fails to disclose selecting a device's power mode from multiple predefined power modes. As indicated in the Applicants' specification, the energy profiles can include a variety of possible modes, including "[l]ow power modes which are easy and quick to terminate, such as spinning down disks or slowing the speed of the CPU clock" or "[m]odes such as turning off the display, entering a suspend or even a hibernate state." (Page 7, lines 14-17) It is, therefore, respectfully submitted that Park does not anticipate the present invention.

In a likewise manner, Claim 13 is not anticipated by Tsirkel et al., since the reference does not teach all of the claimed elements.

35 USC 103 Rejections

As indicated above, Claims 3 and 9 have been cancelled and similar language introduced into Claims 1 and 7, which are now the bases for the remaining rejected dependent Claims 4-6 and 10-12. To the extent that the Examiner might, equally, apply the 35 USC 103(a), Park in view of Nguyen, obviousness rejection to the amended claims, the Applicants assert that such would be improper for the reasons that follow.

It is well established that a *prima facie* case of obviousness is only present if three basic criteria are met, specifically: (1) there must be some suggestion or motivation to modify or combine references; (2) a reasonable expectation that the modification or combination of references will prove successful; and (3) the prior art must teach or suggest all of the claim limitations. *See e.g., In re Vaeck,* 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Furthermore, applicable references must be analogous prior art, i.e., "[I]n order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker,* 977 F.2d 1443, 1146, 24 USPQ2d 1143, 1145 (Fed. Cir. 1992).

Firstly, Park in view of Nguyen is non-analogous prior art. Nguyen appears to address an automotive system used to help prevent car jacking (Col. 1, lines 1-2), whereas, the present invention relates, but is not limited to, increasing the energy

efficiency of portable and non-portable devices, including cell phones, laptop computers, CD and DVD players, etc. (Page 1, lines 6-14) In *Wang Laboratories, Inc. v. Toshiba Corp.*, 993 F.2d 858, 26 USPQ2d 1767 (Fed. Cir. 1993) the Court explained that a reference to a single inline memory module (SIMM) was not analogous just because it related to SIMM memories as did the claimed invention. In reaching its decision the court gave weight to the fact that the claimed invention used memory modules in personal computers and contained dynamic random access memory in contrast to the reference, which taught the use of static random access memories for use in industrial controllers. *Id.* In the same way, the current invention and the cited reference relate to wholly different fields, i.e., automotive security versus power management of various computer like devices; therefore, they are not analogous merely because they both contain the use of RFIDs. For this reason alone any obvious rejection is improper. However, even if the reference were to be considered analogous art a 35 USC 103 rejection is still improper, because the other basic obviousness criteria are not present.

Park in view of Nguyen fails to teach all of the limitations of the current invention. Both Park and Nguyen seem to teach ways in which items are either turned on or turned off depending upon whether an individual is present. In stark contrast, the present invention relates to adjusting the energy consumption of a device based upon a predefined plurality of power modes. Broadly speaking, the current invention contemplates a graduated power management system unlike the on/off systems described in the references cited above. As indicated before, the power modes in the present invention can take many forms. For example, a CPU clock speed could be lowered or

computer hibernation could be initiated. The failure to teach all of the claim limitations contained in the present invention makes any obvious rejection based upon the references improper.

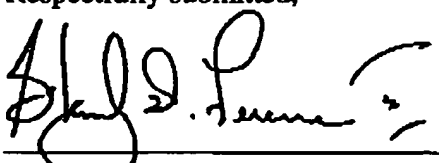
Finally, it should also be noted that even when references are combined their combination is not made obvious for 103 purposes without a suggestion or motivation to make the combination. Neither reference indicates any such suggestion nor motivation. More specifically, there is no reason why an RFID should be used with the Park reference's on/off system. Only when consideration is given to a graduated power management system does a motivation readily present itself - the association of a particular user to one of many possible power modes. However, as the Examiner is well aware, it is impermissible for such a suggestion to be taken from the claimed invention under examination when making an obvious rejection. Thus, again, the present invention is not obvious over Park in view of Nguyen.

The "prior art made of record" has been reviewed. Applicants acknowledge that such prior art was not deemed by the Office to be sufficiently relevant as to have been applied against the claims of the instant application. To the extent that the Office may apply such prior art against the claims in the future, Applicants will be fully prepared to respond thereto.

In summary, it is respectfully submitted that the instant application, including Claims 1, 2, 4-8, 10-22, is presently in condition for allowance. Notice to the effect is

hereby earnestly solicited. If there are any further issues in this application, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,



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